

September 29, 2020

FILE

Mr. Greg Sopkin
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Re: Coyote Station Title V Permit to Operate – Response to Comments

Dear Mr. Sopkin:

It has come to our attention that EPA Region 8 may want more information regarding the North Dakota Department of Environmental Quality's (NDDEQ) consideration of the Lignite Sales Agreement (LSA) dated October 10, 2012 between Coyote Station (CS) and Coyote Creek Mine (CCM). In a November 14, 2018 letter, EPA recommended NDDEQ review certain "potentially relevant sections" of the LSA.

As part of our process, NDDEQ followed-up on the EPA recommendation. Attached to the "Department Response to Comments" was an updated source determination memo, titled "Stationary Source Determination." On page 2 of the memo, NDDEQ stated, "To determine if CS has 'power or authority over' CCM and not just the 'mere ability to influence', NDDEQ reviewed the LSA dated October 12, 2012 between Coyote Creek Mining Company, L.L.C. and Otter Tail Power Company, Northern Municipal Power Agency, Montana-Dakota Utilities Co., and Northwestern Corporation." Thus, NDDEQ reviewed the entire LSA, including but not limited to the sections identified by EPA in its November 14, 2019 letter.

NDDEQ only specifically addressed the sections of the LSA that it concluded were relevant to the issues before it and, in particular, those that it determined were relevant applying the analysis outlined in the "Meadowbrook Letter." Sections that NDDEQ deemed irrelevant – including "potentially relevant sections" identified by EPA – were not specifically addressed. Accordingly, NDDEQ did not discuss sections of the LSA that did not relate to "the power or authority to dictate the outcome of decisions of another entity", specifically over the ability to control a source's pollutant emitting activities, which is the primary focus of the "Meadowbrook Letter".

NDDEQ notes that both CS and CCM responded directly to the Voigts' comments, including the above referenced sections of the LSA. NDDEQ considered these responses when completing the response to comment and stationary source determination. CS addressed the Voigts' comments on the LSA on pages 5 and 6 of the "Response to Comments of Casey and Julie Voigt on Draft Permit T5-F84011". CCM also addressed the Voigts' comments on the LSA on pages 3 through 5 of the "Comments on Draft Permit TS-F84011". NDDEQ concurs with the information provided by both CS and CCM regarding nature of the LSA.

918 East Divide Avenue | Bismarck ND 58501-1947 | Fax 701-328-5200 | deq.nd.gov

Director's Office
701-328-5150

Division of
Air Quality
701-328-5188

Division of
Municipal Facilities
701-328-5211

Division of
Waste Management
701-328-5166

Division of
Water Quality
701-328-5210

Division of Chemistry
701-328-6140
2635 East Main Ave
Bismarck ND 58501

In summary, NDDEQ examined the LSA in its entirety and concluded that the LSA is a contract between two independently owned and operated companies and not a document that gives the power or authority of one entity over the other to dictate the outcome of decisions affecting air pollution emissions.

NDDEQ appreciates the November 14, 2018 suggestions by EPA Region 8 and the opportunity to confirm aspects of our review.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Semerad". The signature is fluid and cursive, with a large initial "J" and a distinct "S" at the end.

James L. Semerad
Director
Division of Air Quality

JLS/DES:saj